

REMARKS

In this response to the above identified Final Office Action, the Applicants respectfully request reconsideration in view of the following aforementioned amendments and remarks. Claims 1, 7, 8, 11, 14, 25, 31, 32, 34, and 38 are amended. Claim 49 is canceled. Accordingly, claims 1-48 are pending in the application.

The claim amendments should be entered because the Applicants believe that the amendments place the claims in condition for allowance. However, if the Examiner believes any of the claims are not in condition for allowance, the Applicants respectfully request that the Examiner please contact the Applicants via telephonic conference to explore the possibility of canceling those claims to place the instant application in condition for allowance.

I. Claims Rejected Under 35 U.S.C. § 103

A. Claims 1, 4, 8, 2, 5, 9, 15, 18, 20, 32, 39, 42, 44, 14, 19, 38, and 43 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,810,031 to Hegde et al. (hereinafter "Hegde") in view of U.S. Patent Publication No. 2005/0091397 filed Roberts et al. (hereinafter "Roberts") in further view of U.S. Patent No. 5,436,898 to Bowen et al. (hereinafter "Bowen").

Claim 1, as amended, recites the elements of "updating the overshoot value for the first port based on the number of bytes transferred on the first port in excess of the predetermined number of bytes less the overshoot value, wherein *the number of bytes transferred on the first port during the current cycle is in excess of the predetermined number of bytes plus the overshoot value*" (emphasis added). The amendment incorporates the limitations in claim 49. The Examiner indicated (see page 20) that claim 49 was objected to for being dependent on a rejected base claim (i.e., claim 1) but would be allowable if rewritten in independent form including all limitations of the base claim. Because claim 1 (which claim 49 depends on) now includes all limitations of claim 49, the Applicants submit that claim 1 is patentable over the art of record and is in condition for allowance. Thus, such action is earnestly solicited at the Examiner's earliest convenience. Moreover, claim 49 has been canceled in light of the amendment. Accordingly, reconsideration and withdrawal of the rejection of claim 1 are respectfully requested.

With respect to dependent claims 2, 4, and 5, these claims depend from base claim 1 and incorporate the limitations thereof. Thus, for at least the reasons mentioned in connection with claim 1, Hegde in view of Roberts in further view of Bowen fails to teach or suggest the each element of claims 2, 4, and 5. Accordingly, reconsideration and withdrawal of the rejection of claims 2, 4, and 5 are respectfully requested.

With respect to independent claims 8, 14, 32, and 38, these claims, as amended, recite analogous limitations to those in claim 1. Therefore, for at least the reasons discussed in connection with claim 1, Hegde in view of Roberts in further view of Bowen fails to teach or suggest each element of claims 8, 14, 32, and 38. In addition, dependent claims 9, 15, 18, 19, 20, 39, and 42-44 are patentable over the cited art because each of these claims depends on claim 8, 14, 32, or 38. Accordingly, reconsideration and withdrawal of the rejection of claims 8, 9, 14, 15, 18, 19, 20, 32, 38, 39, and 42-44 are respectfully requested.

B. Claims 3, 6, 16, 40, 45, 7, 17, 21, 41, 25, 28, 26, 29, 27, 30, 31 and 32 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hegde in view of Bowen in further view of U.S. Patent No. 6,920,110 to Roberts et al. (hereinafter “Roberts et al.”).

In regard to claims 3 and 6, these claims depend from base claim 1 and incorporate the limitations thereof. Thus, for at least the reasons discussed in connection with claim 1, claims 3 and 6 are patentable over the cited art. Accordingly, reconsideration and withdrawal of the rejection of claims 3 and 6 are respectfully requested.

In regard to claims 16, 17, and 21, these claims depend from base claim 14 and incorporate the limitations thereof. Thus, for at least the reasons discussed in connection with claim 14, claims 16, 17, and 21 are patentable over the cited art. Accordingly, reconsideration and withdrawal of the rejection of claims 16, 17, and 21 are respectfully requested.

In regard to claims 25, 32, and 38, these claims, as amended, recite analogous limitations to those recited in claim 1. Thus, for at least the reasons set forth in connection with claim 1, claims 25, 32, and 38 are patentable over the cited art. Moreover, dependent claims 26-30, 40, 41, 45 are patentable over the cited art because each of these claims depends on claim 25, 32, or

38. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection of claims 25-30, 32, 38, 40, 41, and 45.

In regard to claims 7 and 31, these claims, as amended, recite the limitations of “setting the overshoot value to zero, *the overshoot value to be used to balance bandwidth on the first port during a subsequent cycle*” (emphasis added). The amendment clarifies the claim language in light of support found, for example, in paragraphs [0040]-[0042] and [0051] of the Specification. The Examiner conceded that Hegde fails to teach or suggest the elements related to “setting the overshoot value to zero,” as recited in claims 7 and 31. The Applicants also note that although the Examiner relied upon Bowen to assert the rejection of claims 7 and 31 (see page 6), the Examiner has failed to cite the portion of Bowen (see pages 8 and 13) that allegedly discloses the missing elements. Further, Roberts et al. fails to teach or suggest the missing elements as discussed below.

On pages 9 and 14 of the Final Office Action, the Examiner cited column 10, lines 23-32 of Roberts et al. disclosing that the threshold is initially set to zero (at step 128) as allegedly disclosing the elements of “setting the overshoot value to zero.” In other words, the Examiner has characterized the “threshold” as being equivalent to the “overshoot value” as recited in claims 7 and 31. However, the Examiner’s position has failed to consider the entirety of what is disclosed in Roberts et al. For example, at step 124 (as shown in Fig. 7) the actual usage (e.g., a number of bytes transferred) is determined to be greater than a max value. Then at step 126, if this is the case (i.e., actual usage > max value), the max value is then set to equal the actual usage (i.e., max value = actual usage). It should be understood that the max value is set to a *non-zero value* at step 126 because the actual usage is greater than zero. Finally, at step 128, the threshold is calculated *based on the max value*. Although, the threshold is first initialized to zero (as the Examiner stated), Roberts et al. clearly discloses that the threshold is then set to be equal to a *non-zero percentage of the max value*. See Roberts et al., column 10, lines 32-37. This *non-zero threshold value* is then used when the actual usage is measured again at step 122. See Roberts et al., column 10, lines 37 and 38. Because the threshold value is now *greater than zero*, consequently, Roberts et al. fails to teach or suggest the elements of “setting the overshoot value to zero, *the overshoot value to be used to balance bandwidth on the first port during a subsequent cycle*” (emphasis added) as recited in claims 7 and 31. Thus, Hegde in view of

Bowen in further view of Roberts et al. fails to teach or suggest each element of claims 7 and 31. Accordingly, reconsideration and withdrawal of the rejection of claims 7 and 31 are respectfully requested.

C. Claims 11 and 34 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Publication No. 2002/0039364 to Kamiya et al. ("Kamiya") in view of Hegde.

Claims 11 and 34, as amended, recite the limitations of "the plurality of pairs of ports comprising *a first plurality of ports* included in a first interface and *a second plurality of ports* included in a second interface" (emphasis added). The amendment clarifies the claim language in light of support found, for example, in paragraph [0064] and Fig. 8 of the Specification. The Examiner alleged, as shown in Fig. 1, that "elements 204_1, 204_2 input ports correlates [*sic*] to a port connected to a first interface and a port connected to a second interface." Fig. 1 of Kamiya, however, shows *each input interface including a single port* rather than "*a first plurality of ports* included in a first interface and *a second plurality of ports* included in a second interface" (emphasis added) as recited in the claims. See Kamiya, paragraph [0036]. Consequently, Kamiya fails to teach or suggest each element of claim 11. In addition, the Examiner has not relied upon and the Applicants have been unable to discern the part of Hegde that cures the deficiencies of Kamiya. Therefore, for at least the foregoing reasons, Kamiya in view of Hegde does not teach or suggest each of the elements of claims 11 and 34. Accordingly, reconsideration and withdrawal of the rejection of claims 11 and 34 are requested.

D. Claims 12, 35, 13 and 36 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kamiya and Hegde as applied to claims 11 and 34 and further in view of Carr. To establish a *prima facie* case of obviousness Examiner must show that the cited references, combined, teach or suggest each of the elements of the claims.

Claims 12 and 13 depend from independent claim 11, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claims 11, and because Examiner has not relied upon and the Applicants have been unable to discern any part of Carr that cures the deficiencies of Kamiya and Hegde, Kamiya and Hegde and further in view of Carr does not teach or suggest each of the elements of these dependent claims. Accordingly, reconsideration and withdrawal of the rejection of claims 12 and 13 are requested.

Claims 35 and 36 depend from independent claim 34, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 34, and because Examiner has not relied upon and the Applicants have been unable to discern any part of Carr that cures the deficiencies of Kamiya and Hegde, Kamiya in view of Hegde and further in view of Carr does not teach or suggest each of the elements of claims 35 and 36. Accordingly, reconsideration and withdrawal of the rejection of claims 35 and 36 are requested.

II. Allowable Subject Matter

The Applicants note with appreciation that claims 22, 37, and 46 have been allowed. In addition, the Applicants also respectfully acknowledge the Examiner's allowance of claims 23, 24, 47, and 48 because each of these claims depends on allowed claim 22 or 46.

Further, upon review of the Final Office Action, the Applicants note that the Examiner has failed to assert a rejection for claim 10 based on the cited art. Claim 10 recites analogous elements to those in claim 37. Because the Examiner has indicated that claim 37 has been allowed (and failed to assert a rejection of claim 10), the Applicants believe that claim 10 is in condition for allowance as well for the reasons stated by the Examiner (see page 20) in connection with claim 37. Therefore, allowance of claim 10 is earnestly solicited at the Examiner's earliest convenience.

The Applicants note with appreciation the Examiner's indication that claim 49 would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. As previously discussed, the limitations of claim 49 have been included in base claim 1. Thus, in light of the amendment, the Applicants believe claim 1, along with the respective dependent claims, are in condition for allowance. Moreover, as discussed above, independent claims 8, 14, 25, 32, and 38 have been amended to recite analogous limitations to those (formerly) included in claim 49. Therefore, the Applicants believe that claims 8, 14, 25, 32, and 38 (along with their respective dependent claims) are also in condition for allowance. Accordingly, the Applicants respectfully request consideration and allowance of claims 1-6, 8, 9, 14-21, 25-30, 32, 33, 38-45 at the Examiner's earliest convenience.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207 3800.

Respectfully submitted,

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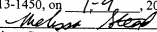
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Melissa Stead 1-9, 2008